

# THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS  
MASSACHUSETTS 02557  
(508) 693-3453  
FAX (508) 693-7894

## *Martha's Vineyard Commission Minutes for the Regular Meeting of December 20, 2001*

The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, December 20, 2001, at 6:30 p.m. in the cafeteria of the Martha's Vineyard Regional High School, Edgartown-Vineyard Haven Road, Oak Bluffs, Mass. *[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; D. Flynn; J. Greene; T. Israel; J.P. Kelley; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; A. Woodruff; and R. Zeltzer. All of these members remained for the entirety of the Meeting.]*

At 6:40 p.m., a quorum being present, the Meeting was brought to order by James R. Vercruysse, the Commission Chairman and a member at large from Aquinnah. He announced that before that evening's Hearing session, the Commission would take up the Oral Vote on a pending Development of Regional Impact (DRI).

### **LUPC Report: County Sheriff's Dept. Community Corrections Center (DRI #547).**

Richard J. Toole – a Commission member at large from Oak Bluffs and Chairman of the Land Use Planning Committee (LUPC) – provided a report on his committee's conclusions regarding the County Sheriff's Department Community Corrections Center (DRI #547), describing the two Post-Public Hearing Reviews of the project as well as a visit to the site. The Applicant had submitted a landscaping plan, Mr. Toole noted, which he believed addressed the concerns the Commission had had in this regard. *[See the Full Commission Meeting File of December 20, 2001 (the meeting file) for a copy of the revised landscaping plan.]*

Mr. Toole concluded that the LUPC was recommending that the full Commission vote to approve the project as amended. He asked Edgartown Selectmen's Appointee Michael Donaroma if he wished to comment further on the landscaping plan. "No, I think we went over it at Land Use, and if the Applicant's okay with it, we're all set," replied Mr. Donaroma.

**Oral Vote: County Sheriff's Dept. Community Corrections Center (DRI #547).**

Daniel Flynn, the County Commission representative, made a **Motion to Approve the County Sheriff's Department Community Corrections Center as Amended**, duly seconded by Mr. Donaroma. The Chairman pointed out that there were State funding considerations in this case and thus it was necessary to move this project along to the next stage of the approval process. There being no discussion, Chairman Vercruysse conducted a vote by hand on said Motion, which carried unanimously.

AYES: J. Athearn; J. Best; C. Brown; M. Donaroma; D. Flynn; J. Greene;  
T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole;  
J. Vercruysse; K. Warner; A. Woodruff; and R. Zeltzer.

NAYS: None.

ABSTAINING: None.

INELIGIBLE: J. Kelley; and M. Oglesby.

RECUSED: M. Cini.

County Sheriff Michael McCormack thanked the Commission members. "I think what you've done is you've approved a building that's going to be a real asset to the community," he said. The time was 6:42 p.m.

**Continued Public Hearing, Session Five: Down Island Golf Club (DRI #543).**

Mr. Toole, who was the Hearing Officer that evening, read into the record the Notice of Continued Public Hearing for the Down Island Golf Club proposal (DRI #543). *[See the meeting file for a copy of said notice.]* He noted that in the last three sessions, the Applicant's representatives had made their presentation and that this session would be devoted for the most part to testimony from officials and members of the public who had not been heard from previously. This would be followed, he said, by questions from the Commission members on testimony they had heard that evening as well as their queries to the Applicant.

Joseph P. Kelley, a Governor's Appointee, asked how Mr. Toole intended to break up the time for each of these aspects of the session. "Are you going to limit presentations to a time frame?" he wondered. Mr. Toole responded, "I hadn't thought about it. I was going to see how it went. Any suggestions?" Mr. Kelley expressed concern that someone might choose to testify for an hour. In addition, he recommended that the Commissioners address their questions to those testifying at the time of their testimony. Mr. Flynn stressed that only people who had not yet testified should be allowed to do so. "Definitely," said Mr. Toole.

**Testimony from Public Officials.**

**Deacon Perrotta, the Water Superintendent for the Towns of Tisbury and Oak Bluffs**, said he was there that evening to represent the Oak Bluffs Water Commissioners. The official statement of that body was, he said, was that based on scientific merit, the Board of Water Commissioners had stated unanimously that the proposed Down Island Golf course project had met or exceeded the Water District's environmental requirements and review as outlined in the Massachusetts Department of Environmental Protection (MEPA) comments dated December 21, 1998 and in the November 19, 2001 letter from the Oak Bluffs Water District Board of Water Commissioners. *[See the meeting file for a copy of the latter.]*

Mr. Perrotta continued that he also wished to make some comments "professionally," whereupon he listed his qualifications to offer such observations. "I am directly responsible for the production, treatment, distribution and water quality testing of over 600 million gallons of water per year for those two Towns," he stated. "I would like to say that in addition to the hydraulic modeling and other engineering tests we did for this golf course investigation, that there are, that we also looked at other issues related to golf courses."

"During the first Hearings, one of the public comments was that people didn't believe our science, even though it's the same science that produces the 600 million gallons of water annually for the Island," Mr. Perrotta observed. So what he had done was to take a look at practical examples. "I found that in most cases we're not the first people who ever came up against this issue," he said. Thus, he had looked at the Farm Neck Golf Club, which had been there as long as the Farm Neck well had been there, about 28 years.

Mr. Perrotta had also called Bob Garner, an Associate Superintendent who runs the Water Department on Nantucket, where a golf course had been built directly over the aquifer. When asked if he had seen any water-quality or withdrawal problems, Mr. Garner had answered in the negative. In addition, Mr. Perrotta had talked to a number of other Superintendents, including some at the Annual Conference of the New England Waterworks.

Mr. Perrotta continued that a representative from the Department of Environmental Protection had advised him to talk to Bruce Baldwin, the Superintendent in Seekonk. Mr. Baldwin had told him that Seekonk had built its first public water supply in 1946 and that the following year the Ledgemont Country Club had built a golf course surrounding that tubular well field.

Mr. Perrotta then outlined the features of a tubular well field, which had small-diameter wells and was what he described as "a Superintendent's nightmare because there's so many attachments, you're on a vacuum system, very susceptible to groundwater intrusion from surface water and are rated so by DEPA and are usually no longer in existence." In

54 years of coexistence, declared Mr. Perrotta, there had been no water quality problems, "and in fact the well exhibits the most stable water quality of all their wells."

The Seekonk facility was also notable, Mr. Perrotta said, because at the golf course's inception the first aquifer protection agreement in Massachusetts had been signed. "They actually used a golf course for aquifer protection, and that's way before the technology we have today," he said.

Mr. Perrotta wound up his testimony: "In conclusion, both science and practical experience indicate that the project will not impact on water resources. I recommend that the Commission vote favorably for the project."

Tisbury Selectmen's Appointee Tristan Israel wanted to know how Mr. Perrotta's board had been involved during the Application process. Mr. Perrotta explained that during the first Application, the Applicant had approached the Water Commissioners and given them an overview of their proposal. At that time, he said, the board had raised its own concerns. "It was own concern, and it still is our concern, to produce potable water for this Island," he remarked. "So we were involved from the inception of the project, and that's what spurred us to do the hydraulic modeling, et cetera, et cetera, that went into the review of this project."

Aquinnah Selectmen's Appointee Megan Ottens-Sargent referred to a letter from Earth Tech hydrogeologist Jesse Schwalbaum, who had been hired by the Water District Commission, which had mentioned that the actual geology of the area and the aquifer beneath the golf course site was "relatively uniform and similar in nature to what is found in other parts of our aquifer on the Vineyard." However, Mr. Schwalbaum's letter continued, during a previous investigation, significantly more complicated subsurface stratigraphy had been encountered near the intersection of Barnes and Edgartown-Vineyard Haven Roads.

Mr. Schwalbaum's letter, as read aloud by Ms. Ottens-Sargent, had concluded: "It is in my professional opinion there was ample justification for conducting a more thorough subsurface investigation than was provided." Ms. Ottens-Sargent wanted to know if a more thorough investigation had in fact been carried out and if not, why that was not a concern.

Mr. Perrotta prefaced his comments by saying that Earth Tech, formerly known as Whitman and Howard, probably had the most extensive numerical groundwater model for the Island. "So we understand how the aquifer works," he said. "And he was absolutely correct. You can go one foot to the next, and things change a little. But it is generally very consistent...."

Mr. Perrotta continued: "We took their information and put it into our model. Now, they can't fudge the information. They can only do the testing and give it to us, because our model is our model. We own it, it's our data, it's not available to anybody else. So the

numbers they give us when it goes into that model react as consistent as could be for the production of our Farm Neck well that Earth Tech, or Whitman & Howard at the time, was in charge of building, our State Forest well and our Lagoon Pond well. So, is there a little difference here or there? Negligible."

Ms. Ottens-Sargent wondered, then, why Mr. Schwalbaum had expressed concern. Mr. Perrotta answered, "He expressed concern because his job was to give us all the facts regarding the investigation. However, and I don't have the document with me that's given in the first testimony, is that his review letter, is that the impact is negligible." "A subsequent letter?" asked Mr. Ottens-Sargent. Mr. Perrotta replied, "There is a letter that our engineering consultant provided us – correct. It was part of the first submission, and I don't know if that's still part of the testimony of this or not."

Oak Bluffs Selectmen's Appointee Kenneth Rusczyk noted that once again people would probably be trying to say that the golf course was going to ruin the Island and that the nutrients and pesticides would immediately find their ways into Sengekontacket Pond and the Lagoon. What was Mr. Perrotta's view on this? Mr. Rusczyk asked.

Mr. Perrotta replied that he had looked at the Applicant's nitrogen reduction plan under both worse-case and best-case scenarios. For instance, he said, their study had considered the impact of 366 houses on the site, not just the 91-house scenario that Commission Water Resources Planner William Wilcox had considered. The result they had come up with, he concluded, was that the golf course would have a negligible impact on water quality and withdrawal.

**Kathy Cerrick of Chilmark** wanted to know if she could speak during this portion of the testimony since she was a Town Official in her Town. Mr. Toole informed her that she would have to wait until members of the public were asked to speak.

**Richard Combra, an Oak Bluffs Selectman for the past five years**, said that he had "also served probably on every board and committee, either elected or appointed, in the Town of Oak Bluffs over the past 25 years." During the first Application process, he said, he had spoken in support of the Down Island Golf Club proposal, and he had once again voted as a Selectman to support the Remand Plan. He noted that he was speaking that evening as one member of the Board of Selectmen and not as the Chairman, as he had previously. Mr. Combra stated that based on two earlier votes taken on the property in question by the Town, he believed he was also speaking for the majority of the citizens of Oak Bluffs.

Mr. Combra continued: "And I will say to you that I believe as much as you sit here representing many of the Towns, all of the Towns on the Island, that primarily this development is an issue for the Town of Oak Bluffs. I think the residents of Oak Bluffs, through the approval of this plan, will far greater benefit than [with] the alternatives ..."

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It was up to each individual Commission member, Mr. Combra said, whether he or she wished to consider the possibility of a Chapter 40B development on the Southern Woodlands property, should the Application before them fail to be approved. "But as a member of the Oak Bluffs Board of Selectmen, I have to think very long and very hard about the potential of a 40B happening in Oak Bluffs. If that 40B Application were to become a reality, it would be the demise of the Town of Oak Bluffs, in my opinion," he declared.

Mr. Combra then described the "vibration" his Town was currently feeling from the other Island Towns because of Oak Bluffs' affordability. "A 40B Application would only enhance that," he said. "We presently are experiencing, because of the migration of students from the other Island Towns, an increase in the assessment to the Town of Oak Bluffs, our regional high school assessment, of an additional \$230,000 this year, and I firmly believe that documentation will prove that those students came from the other Island Towns, as they will with a 40B Application."

His Board, Mr. Combra continued, had secured what they believed to be expert advice, "and it is our opinion that Oak Bluffs will fight the challenge of this 40B on its own. We do not believe the Martha's Vineyard Commission will hold its place in this discussion. Just as you have already received from one Town a request that you not involve yourselves in these issues, that they be left to the Town of Oak Bluffs to determine the fate of the 40B Application. I believe that other Town will follow suit."

About a year before, Mr. Combra said, his Town had entered into a partnership with the Martha's Vineyard Commission in designating the Southern Woodlands District of Critical Planning Concern. In developing the regulations for this special property, he observed, the Town of Oak Bluffs had recognized the Southern Woodlands as a special place in his Town. "I believe that the discussions that led up to the adoption of special regulations in the Southern Woodlands were represented before the voters of Oak Bluffs that these regulations in no way would regulate golf as an alternative development on those properties," he remarked.

Mr. Combra then spoke about the special qualities of Oak Bluffs itself. "We are the Town that I think can easily be described as the Town of Inclusion," he said. What had been described as a luxury golf course, he pointed out, had evolved in the last year and a half into "a very public property, an opportunity for many Island residents to enjoy the game of golf, to have the opportunity to play on a world-class golf course, opportunities that don't exist today."

Mr. Combra characterized Applicant Corey Kupersmith as a developer who had "adopted the theme of Oak Bluffs. He has turned this golf course into one [where] many of the Oak Bluffs year-round residents like you and I, working-class people, have every opportunity to participate in the enjoyment of this property, not only for the golf, for the railway systems, through opportunities that development of the golf course will bring, financial gains both to the Town of Oak Bluffs and to the Island as a whole."

One of the most troubling aspects of this process, said Mr. Combra, had been the inappropriate removal of County Commission representative Daniel Flynn from this discussion. *[Note: In a December 5, 2001 vote, the County of Dukes County Commissioners did not reappoint Mr. Flynn to his MVC position.]* Mr. Flynn had earned the opportunity to be able to vote on this proposal, declared Mr. Combra, who added, "I would encourage you to conclude your testimonies, deliberate and vote to approve this golf course, hopefully prior to his leaving the Commission."

**Todd Rebello, an Oak Bluffs Selectman**, stated that he had also voted in the affirmative as a Board member to support the Down Island Golf Club proposal. He reminded the Commission members that when the first plan had been denied, specific reasons were given. "The Commission at that point set the bar for what I believe is today's re-application," he remarked. "Your concerns [are] where basically the Applicant started their new process, their new designs. I just ask you today to not raise that bar further."

As he saw it, continued Mr. Rebello, the reworked plan struck "a balance between what we're trying to accomplish on this Island, that is, land use planning, [it] strikes a balance between development and open space." Development, he said, basically came in two forms – "housing and, these days, golf. Those are the two tools of the developer. Unfortunately, today we have a lot of alternatives to consider."

Foremost among those alternatives, continued Mr. Rebello, was Mr. Kupersmith's Chapter 40B proposal, a threat not only to the Town of Oak Bluffs but to every Town on the Island. "We don't want to be your service model for 40B Applications," he said, stressing that currently the Town of Oak Bluffs was paying 25.01 percent of the total regional high school assessment.

He was concerned, Mr. Rebello went on, to hear Commission members say that they would fight this battle today and fight the Chapter 40B battle down the road. "But that's going to be a hell of a price to pay for the Town of Oak Bluffs if you're wrong," he declared, referring to the possible conclusion by the courts that the MVC could not in fact review such developments.

Moreover, the Town of Oak Bluffs supported the Commission with an eighty-thousand-dollar assessment each year, and although there had been talk of his Town leaving the MVC, Mr. Rebello said that he did not believe that they would – "I believe we support this Commission because you're a land use planning agency, and that's what I'd like to see continued."

Mr. Rebello then described how by imposing the proper conditions, the Commission could find a way to compromise and to address its concerns. He then proposed the following conditions:

1. That the Applicant pay in perpetuity the sum of \$10,000 per year for a period of five years to the Town of Oak Bluffs for the purpose of hiring an independent monitor of any and all conditions set by the Commission;
2. That the Applicant raise the number of Island memberships from 150 to 175 and reaffirm that all monies derived from those memberships will be paid to the Town of Oak Bluffs; and
3. That the Applicant's offer of a 20-year lease on the area described as Webb's Campground be increased to 99 years.

Mr. Rebello made reference to the rumors that not all of the conditions imposed by the Commission were being following by the Vineyard Golf Partners Applicant in Edgartown. "But as long as I'm on the Board in Oak Bluffs, it is my intention to make sure that any conditions that are carried, handed out here are enforced," he emphasized, "because that's the responsibility that I have to the Town of Oak Bluffs."

**Michael Dutton, Chairman of the Oak Bluffs Board of Selectmen**, said that he was there that evening to report officially the endorsement by his Board of the Down Island Golf Club proposal. He wanted it to be clear, he stressed, that project should be approved only with appropriate conditions and that the project should ultimately rise or fall based on a thorough review by the Oak Bluffs Planning Board.

Mr. Dutton remarked on the comprehensiveness of the proposal, which potentially affected about 10 percent of the land mass of his Town. "This Board of Selectmen in our Town," he declared, "feels that with the stated benefits, the negotiated benefits that the Applicant has proposed and some of the ancillary benefits that I'll discuss in a moment, that this is the best possible proposal for this piece of land now."

After expressing the opinion that the plan before them was "drastically better than the first," Mr. Dutton listed four points that the Town had made very clear over the years that the project had been discussed. They were:

1. That Oak Bluffs wanted public access;
2. That Oak Bluffs wanted as much land preservation as possible;
3. That Oak Bluffs did not want this property to be used for a housing development; and
4. That Oak Bluffs wanted to ensure that any activity on the property was not environmentally unfriendly.



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Mr. Dutton observed the change in access in recent years, with many people on the Island closing their private properties to any kind of public access; the Down Island Golf proposal would allow unfettered access to the ancient trails and ways in Oak Bluffs that traversed the property. This was integral, he noted, to the goal of linking the trail networks from West Tisbury to Sengekontacket Pond. "Without this proposal, we don't have a guarantee of public access," he emphasized. "It's private property."

As for land preservation, continued Mr. Dutton, for many years the Southern Woodlands had been known as an area with "title problems," a red light to any developer. What Oak Bluffs should have done years before, he suggested, was take the land by eminent domain and purchase Webb's Campground. "But we didn't, and quite frankly now we can't," he said.

Mr. Dutton went on, "But that doesn't mean that the people of Oak Bluffs feel any less strongly about open space and about land preservation." He pointed out that the Conservation Restriction being offered by the Applicant would guarantee that the property would never be built upon and would always remain open space regardless of the success or failure of the project.

Although many Commission members seemed to feel that they should consider only the proposal before them, Mr. Dutton cautioned that "looming in the background is a proposal for this piece of property that would destroy the fabric and the nature of our Town. Whatever you call it, the people of Oak Bluffs call this a disaster. We do not want a housing development of 360, of 91 or of anything in between on this piece of property."

Mr. Dutton explained that although the Town had been presented with one Chapter 40B Application, two more were expected over the next several months. "We don't treat all the 40B Applicants as hostile 40B Applicants, but I have to tell you that an Applicant proposing 300 and some odd units in the Southern Woodlands is a hostile Applicant," he remarked.

Having spoken to State officials and legislators and having hired expert legal advice, Mr. Dutton related how he had concluded that the Town of Oak Bluffs would be saddled with the cost of defending itself against unfriendly Chapter 40B development. "We'll be forced to triple our Fiscal Year 2003 legal line item in our budget, which quite honestly we can't afford to do," he said. The Town, he emphasized, could not afford the long-term costs, like an increased school population, nor could they afford the short-term impact of expending taxpayer money on the legal expense of a protracted battle to deny a Chapter 40B Application. "And quite honestly, I don't think we can win that battle," he added.

Mr. Dutton pointed to the irony of the Commission's having some control over the financial well-being of his Town. "I encourage you," he declared, "to review this plan, to review it very carefully, add conditions to it - you can condition it to death as far as I'm

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concerned – but this is a good Application and it's a good project for this piece of property.”

In concluding, Mr. Dutton offered what he considered to be reasonable conditions to be attached to the Decision, should the Commission vote favorably:

1. That the Commission include the Conservation Restriction in their approval;
2. That the Commission vote for environmental monitoring of the property; and
3. That the Commission include as a condition the ability of Oak Bluffs to ask the Applicant to provide leaching capability for the Town's sewerage treatment plant.

Mr. Dutton elaborated on the third condition: “Our capacity, the way our plant is built and the way it leaches into Ocean Park, our capacity for growth and our capacity to provide the sewer system to the rest of our Town is severely limited. To the extent that we can add more people to our system and improve the quality of the discharge coming out of their homes as tertiary treated material – we are interested in doing that.”

“So I urge to you to vote this Application, and I urge you to do it with the appropriate conditions,” Mr. Dutton concluded.

Chilmark Selectmen's Appointee Jane A. Greene inquired, “Could you explain where this leaching would go that you're proposing?” Mr. Dutton answered that many golf courses now provided leaching services to the municipalities and housing developments that surrounded them. The Oak Bluffs treatment plant was situated under the landfill, and although it was not quite an abutter, it was close enough to the proposal site for that property to provide leaching capability.

The Massachusetts Department of Environmental Protection was almost at the point, Mr. Dutton explained, where they would allow the leaching of tertiary treated materials over Zone II. With the golf course site in Zone II, he said, the treated materials could possibly be used for irrigation.

“Would you be proposing that the Applicant would pipe from the treatment plant to the golf course at their expense?” asked Ms. Greene. “The Town would be very interested in that,” replied Mr. Dutton, “and quite honestly, a lot of it is up in the air because my understanding is, the DEP has not made a final ruling on this particular issue. But to the extent that you can build in conditions that would allow for that, this Town would be far better for it.”

With no more Public Officials wishing to speak, Mr. Toole asked for testimony from members of the public.

**Testimony from Members of the Public.**

**Mark E. Nelson, a hydrogeologist and principal at the firm of Horsley & Witten, Inc.**, related that he had been hired by the Vineyard Conservation Society to review the proposed nitrogen mitigation plan and the nitrogen-loading studies that had been done by the Applicant. He then submitted for the record a letter enumerating his conclusions. *[See the meeting file for a copy of Mr. Nelson's letter.]*

Using slides to illustrate his points, Mr. Nelson stated, "In concept, the nitrogen mitigation approach is, I think, a valid one, and it's one that you see across the United States." Having looked at the loading study and compared it to their own independent calculations, however, his firm had come up with "a number of differences between what has been proposed and what I think are appropriate applications of some of the nutrient loading inputs that are used in this type of study."

Mr. Nelson continued: "In effect, the Applicant has said that the loading that is proposed from the golf course project would be more than offset by off-site mitigation that has been proposed. In my analysis, the reverse is in fact true, that there is mitigation that is proposed, but it does not meet the standard of offsetting the loadings that are coming from the golf course. What is proposed here is not really in balance."

Pointing to a slide showing a table with the two sets of nitrogen loading numbers, Mr. Nelson said that the loading that he foresaw from the golf course was about a third greater than what the Applicant had proposed. One of the reasons for the difference was that the Applicant was using a 3 milligrams per liter standard for the wastewater treatment plant, which was a very low number, while the standard issued by the Massachusetts DEP was 10 milligrams per liter, which he considered "a much more reasonable number."

Mr. Nelson explained that it made sense to use the number that would be the standard for the permit in this loading application, and this in turn would create a slight increase in the amount of nitrogen that would come from the wastewater treatment plant.

Another reason for the difference in the loading numbers, Mr. Nelson continued, was a disparity in the proposed leaching rates for the nitrogen. The Applicant was proposing an average of roughly 10 percent for a leaching rate, based upon some modeling and some field testing that had been done out at the site. What Mr. Nelson had looked at – and what the State DEP looks at, he stressed – was 15 percent rate for golf course leaching, roughly half again as much as had been proposed by the Applicant.

Mr. Nelson noted that the higher rate had been based on a more-than-yearlong study of five golf courses on Cape Cod with very sandy environments similar to what is seen in

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Oak Bluffs. The best data, he said, was from the Bayberry Hills Golf Course in Yarmouth, where 10 years of data had been collected and the leaching rate calculated came to 14 to 14.5 percent.

Mr. Nelson then turned to the mitigation numbers for Lagoon Pond proposed by the Applicant, which he considered "inflated somewhat." He explained that the Applicant was using wastewater flows that were based on the Title V maximum design flow, "a flow that's used for hydraulically designed systems that will never back up or overflow onto the land surface. It's not consistent with the flows that actually go through the system and the amount of nitrogen that actually enters groundwater and actually moves toward Lagoon Pond."

Thus, Mr. Nelson had adjusted those numbers based on average flows coming from the Lagoon Pond study prepared by Commission Staff. "When you do that," he said, "these numbers drop by about a factor of three, for both the Elderly Housing and, later on, the Martha's Vineyard Arena, which is in the Sengekontacket Pond watershed."

In addition, noted Mr. Nelson, the Tisbury Marketplace mitigation numbers should not be included since plans had already been made to hook it into the Town of Tisbury's sewer system. Finally, he said, it was not appropriate to apply the mitigation numbers for Webb's Campground, since that was not a current source of nitrogen "and I don't believe that was used in the Lagoon Pond study to look at the nitrogen loading and I'm not sure that's appropriate here."

Based on these factors, emphasized Mr. Nelson, his calculations showed a net increase in nitrogen loading to Lagoon Pond as a result of the golf course development. The same claims of mitigation and offset for Sengekontacket Pond had been made by the Applicant, he added, and using the assumptions he had outlined earlier, he had concluded that there would be an increase in the nitrogen going into that watershed as well.

Another factor to look at, continued Mr. Nelson, was the Applicant's plan to provide funds to upgrade individual private septic systems in the area. However, when individual homeowners got an innovative system installed on their property, he explained, it involved significant management by the homeowner, by whoever was doing the maintenance and the monitoring of the facility and by the Town Boards with oversight.

Furthermore, Mr. Nelson went on, with a quarter of a million dollars proposed for 1,500 pounds of nitrogen mitigation in the Lagoon Pond watershed, that money on a pound-of-nitrogen basis was about a third of what it cost to do the treatment facilities for the Town of Oak Bluffs and was about one-seventh the cost of installing individual innovative or alternative systems on a lot-by-lot basis. "If that's the proposal, it seems to me to be somewhat under-funded at this point and that could be something to look at as well," he said.

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Finally, Mr. Nelson remarked on the Applicant's proposal to reuse wastewater to irrigate the practice range, cautioning that it would be difficult to meet the State's strict standards in its water reuse policy as to the level of treatment that needed to be achieved prior to that water's being sprayed on the golf course. For instance, said policy called for signage and specific monitoring standards, and Mr. Nelson reported that he had seen no provisions for this in the materials he had reviewed.

West Tisbury Selectmen's Appointee Kate Warner asked Mr. Nelson to comment on testimony by the Applicant and the public about the soils on the site, noting that a couple of those hydrogeologists had said that they did not agree with the Applicant's analysis of the soil because the presence of a ravine on the property would indicate the presence of clay.

"I haven't seen information that there's clay out on that parcel," replied Mr. Nelson. "If it's there, it may be somewhat in depth, I think." He assumed, he added, that during the construction of a golf course, areas of clay would be extracted out and replaced with a more permeable sand to create the high level of drainage needed to make a golf course playable again after a rainstorm.

Mr. Kelley wanted to know if Mr. Nelson had visited the site. Mr. Nelson responded that he had visited the boundaries of the site very briefly. Had he taken samples from the site? wondered Mr. Kelley. No, answered Mr. Nelson, he had reviewed the materials on the sample of soil taken by the Applicant. Mr. Kelley asked if this was his independent view as a hydrologist. "That's correct," replied Mr. Nelson. "Who's paying you for this independent view?" inquired Mr. Kelley. "As I mentioned, my client is the Vineyard Conservation Society," said Mr. Nelson.

Mr. Kelley then asked Mr. Nelson if he was aware that the Vineyard Conservation Society had taken a position on the proposal. "I have not discussed that," responded Mr. Nelson. Mr. Kelley pointed out that Mr. O'Neill had in fact taken a position. Mr. O'Neill stood up and said that the society's position in opposition to the proposal had been stated very clearly and was the same one they had articulated during the first round of this Development of Regional Impact.

Addressing Mr. Nelson, Mr. Flynn commented, "You have taken the latitude to speak a lot for the DEP, what the DEP would do, will do and shall do, and I think it's important for us to realize when he says things like 'Speaking for DEP standards and criteria,' that he doesn't speak for DEP, because he used that in his testimony and they're not here."

Mr. Flynn also objected to Mr. Nelson's statement that two parties were taking credit for the nitrogen loading reduction at the Tisbury Marketplace. "To me, that borders on hysteria. Who cares, as long as the nitrogen is being reduced?" he said. The Hearing Officer asked Mr. Flynn not to debate and to ask Mr. Nelson a question, if he had one.

Mr. Flynn inquired of Mr. Nelson if the proposed golf course met the standards and criteria of the DEP. Mr. Nelson answered that the standards being applied by the DEP would be coming through the groundwater discharge permit, that is, they were strictly associated with wastewater. "If they can meet those standards, I would not object to it," he said. "In my mind, the facility they're designing for wastewater treatment will meet those standards with the exception of the water reuse."

In his experience, added Mr. Nelson, DEP did use the 10 milligram-per-liter standard he had referred to earlier, and he had in fact helped write the model that was used by DEP. Moreover, he said, after an intense debate DEP had accepted a 15 percent leaching rate for golf courses in the Town of Plymouth. "The Cape Cod Commission uses a higher number," he noted.

Responding to another question from Mr. Flynn, Mr. Nelson reiterated that DEP would be looking at the wastewater treatment plant only. "They are not under obligation to look at the sum total and the cumulative impact of the proposed project," he said. "I see that more under your purview than I do under DEP's."

Mr. Flynn asked Mr. Nelson if he knew Commission Water Resources Planner William Wilcox, if he had worked with him, and if he considered Mr. Wilcox knowledgeable, to which Mr. Nelson responded, "Yes," "Yes" and "Very much so." So if Mr. Wilcox gave the Commission an opinion, continued Mr. Flynn, would that be something that Mr. Nelson could adhere to? "Very much so," replied Mr. Nelson.

Ms. Greene observed that if the Applicant was going to be allowed to use graywater to irrigate, DEP would regulate its quality. "Is that not correct?" she inquired. "That's correct," answered Mr. Nelson. "So how are you testifying that they're going to be exceeding something that DEP allows?" asked Ms. Greene. "I don't believe I was," responded Mr. Nelson. "Well, you testified the graywater was going to be unhealthy," said Ms. Greene. Mr. Nelson explained that in order for the treatment system to meet water reuse standards, it had to contain certain system components and thus far he had not seen that as part of the proposal.

Ms. Greene wanted to know what kind of disinfection Mr. Nelson was talking about. Ultraviolet disinfection, micro-filtration, ozone treatment – a two-tiered level of disinfection was required, answered Mr. Nelson. Ms. Greene responded, "So in other words, they wouldn't give them the permit to use this graywater or used water or whatever you want to call it unless they could meet those qualifications on their permit." Mr. Nelson answered that DEP would not allow water reuse unless the treatment met those qualifications. "Yes, but in their permit it would say whether or not they met the criteria, what DEP required, correct?" said Ms. Greene. "That's correct," responded Mr. Nelson.

Mentioning first Mr. Nelson's reference in his letter to the study done at five Cape Cod golf courses in the nineties, Mr. Donaroma confirmed with the hydrogeologist that

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nitrogen loading and leaching could in fact be monitored. And would there have been any difference in the results of the Cape Cod study if organic fertilizers had been applied? asked Mr. Donaroma. Mr. Nelson replied, "The Bayberry Hills Golf Course, which is the information in the 1998 study that I think is most relevant since it's the longest chain of information, a 10-year study, used primarily slow-release fertilizers. Whether they were organic or not, I'm not sure." He added that what one saw at Bayberry Hills was pretty close to the standard used at golf courses today.

"So what I hear you saying is, monitoring works, it tells us the story of what's going on, and organic fertilizers certainly slow the amount of nitrates getting deeper into the groundwater," said Mr. Donaroma. "That's correct," answered Mr. Nelson. And if one were to use organic fertilizer in a lesser amount, then the amount of nitrates going into the groundwater would be even less? asked Mr. Donaroma. Mr. Nelson replied, "That's correct. There's a direct relationship between what's applied and what gets into the water."

Mr. Donaroma wondered about the application of liquid fertilizers that could be applied in interim shots to just the leaf of the grass and whether it would be safe to assume that using that practice would lower the loading numbers. Mr. Nelson said that he was not sure if the studies he had referred to used that technique. "It will simplify your management if you put less on at a time and reduce the amount you are using," he added. "How much that changes the leaching rate I think is a question that's open to debate and would have to be something you'd look at through a monitoring program."

Mr. Rusczyk wanted to know if there had been any attempt to model the effect on nitrogen loading of 90 houses with Title V septic systems and 20 acres of roads. "I did not run that calculation," replied Mr. Nelson. "It would be roughly 25 pounds times 90 houses."

Marcia Mulford Cini, a Commission member at large from Tisbury, inquired, "When you did your nitrogen loading calculations, did you take into account the 33 additional units that have been funded through Island Elderly Housing?" "I did not," answered Mr. Nelson, who explained that he had not seen the additional units or their nitrification system as a component of the May 24, 2001 submission of the nitrogen plan.

After clarifying a few points with Ms. Cini, Mr. Nelson stated, "If these are houses that don't exist today that would be built as part of the project, then it's an increase in the nitrogen." Ms. Cini corrected him, noting that the units would be apartments, not houses.

Ms. Ottens-Sargent wondered what the expected costs would be for installing, maintaining and monitoring individual innovative or alternative systems on a lot-by-lot basis. Mr. Nelson explained that there were a number of costs associated with upgrading the systems: the purchase of the actual piece of equipment that went into the ground; the installation and landscaping work on the site for the installation; and the annual maintenance and monitoring.

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The cost of the equipment would be about \$8,000 to \$10,000, continued Mr. Nelson, and the amount required from installation would vary depending on where the system would be. The monitoring costs, he said, would be in the range of around \$600 a year, not including any electrical costs that would get added to the monthly electrical bill.

Ms. Greene asked Mr. Nelson to explain what kind of monitoring would be done for \$600 a year. "It's typically two visits a year by a maintenance contractor, who's required to come and check out the system twice a year," replied Mr. Nelson, adding, "The monitoring is to look at the nitrogen in the effluent leaving the facility twice a year." Ms. Greene remarked, "I'm very curious. I've never heard of this happening on Martha's Vineyard. Is this a State requirement that's brand-new?" "It's a State requirement for many of the innovative or alternative systems," responded Mr. Nelson. "Oh, so this is for alternative systems," said Ms. Greene. Right, said Mr. Nelson, not for standard systems.

**Ted Morgan of Edgartown** described himself as a proponent of golf courses whose experience included having been the President of the Edgartown Golf Club for the past 10 years. "I happen to believe that a golf course is a means of conserving land and allowing it to be used in an organized way," he said, "and I also believe golf courses are a valuable asset not only to the Town in which they're sited or located, but also to the Vineyard as a whole."

Mr. Morgan related how much golf courses contributed to different causes on the Island, and he wondered what would happen to the Martha's Vineyard Boys' and Girls' Club, the youth hockey program and the hospital if the clubs did not conduct the charity tournaments that they did.

Noting that the Edgartown Golf Club bordered Trapps Pond, Mr. Morgan stated that it had never been a source of pollution in that pond, which supported osprey and herring. Farm Neck Golf Club bordered Sengekontacket Pond, he said, and he was not aware of its ever having been a source of pollution either.

Mr. Morgan pointed out that there was a need and a demand for golf courses, with 260 people on the Edgartown Golf Club's waiting list. "We take in about five people a year," he said. The club also provided an Island membership program under which year-round residents could play at an affordable rate. "I definitely believe that should be a condition on any course that's built on the Island," he remarked.

Mr. Morgan concluded: "But again, I feel very strongly about golf courses, and I really would like to see this Commission vote in favor of this course."

West Tisbury Commission member at large Linda Sibley wanted to know how many of the 260 people on the Edgartown Golf Club waiting list were year-round residents. "Not that many," answered Mr. Morgan. "Most of the people on our waiting list are not year-round residents. We have a legacy list, which is the sons and daughters of existing



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members, and then we have a regular list, and very few are year-round residents." Mr. Morgan reminded the Commissioners that 85 percent of Edgartown's property taxes were paid by seasonal residents and that a lot of those seasonal residents wanted to join golf clubs.

**Jeffrey M. Bernstein, Managing Director of the law firm Bernstein, Cushner & Kimmell**, said that with regard to land use issues he represented the Vineyard Conservation Society and other Island non-profits as well as several cities, towns and private landowners. He referred to his "extensive submission" earlier in the day and said that he would try to provide the highlights of that document. *[See the meeting file for a copy.]*

"In sum, VCS believes that there are ample and deep grounds for the Commission to deny the Down Island Golf Club's Application," Mr. Bernstein said, "because in fact this particular Development of Regional Impact fails to meet the requirements of the Commission's Enabling Act."

Mr. Bernstein then made a request: "I'd like to ask on behalf of VCS and the public that to the extent that the Applicant tries to place any new material before you, that the public have an opportunity to comment before you close your record."

Mr. Bernstein continued that the Application failed to meet the requirements of Sections 14 and 15 of Chapter 831, particularly with regard to water quality requirements, wildlife habitat, the impact on the network of trails and ancient ways, archaeological sites, and the extensive woodlands impacts. "Again, VCS believes that you have an ample foundation to conclude, as was the case with the first Application, that the detriments outweigh the benefits," he said, adding that this was not to suggest that the issues were black and white or that there were not competing concerns.

"But we do suggest," Mr. Bernstein went on, "that as to those objective criteria that absolutely have to be met, you can't find that it's consistent with Section 14, and then you have a variety of grounds which trouble the Commission with respect to the first Application which still exist now." He referred to the fact that the site was woodlands and recalled the testimony of former Commissioner of the Department of Environmental Quality Engineering Anthony Cortese on the impact of the project on the special character of the Island and the special values that the MVC was chartered to protect.

Mr. Bernstein reminded the Commission members that they were not duplicating the permitting Hearings that DEP, State agencies or local boards would conduct: "You have a unique mission, and that mission may consider some of those same as factors. But you have the discretion to balance and to look at those factors very uniquely because of the whole history of the Martha's Vineyard Commission, which I'm sure you all well know. The cumulative impact, the fact of the diminishing resources and the resource decisions that have to be made are yours in a way that belong to no other State, local or regional body."

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Part of the his submission earlier in the day, said Mr. Bernstein, was material on the State Biomap, a project of the Nature Heritage and Endangered Species Program. He then submitted for the record a color photograph and map showing that the Biomap Project had clearly designated the Southern Woodlands site as core habitat. "And VCS suggests that there is a basis for you to find that the development of this site as a golf course is fundamentally inconsistent with that core habitat guide," he explained.

In addition, continued Mr. Bernstein, Mr. Nelson had pointed out that what the Applicant was presenting as a net benefit through the nitrogen loading offset program would in fact be a net detriment. "I'm sure there are quibbles," he remarked, "and I'm sure that you could have dueling CPAs, you could attempt to adjust numbers. But what it shows, I think quite clearly, is that the developer has not carried its burden of demonstrating that there will not be an adverse impact. That's an objective test, and you just don't have a record before you."

Mr. Bernstein argued that there were significant legal issues with respect to the nitrogen reduction plan. "The third parties that would be involved in these private agreements with Down Island are not before you," he said. "You cannot enforce a Decision if parties were not before you. You can with Down Island, but not with those third parties." Other unresolved legal issues concerned termination and lack of funding, he added.

"DIGC is also seeking credits under its nitrogen plan to correct problems that the State DEP and the Oak Bluffs Board of Health have the authority to correct," Mr. Bernstein went on. "In essence, what they're asking for is credit to stop someone from doing something that may be illegal. There is no legal justification to provide that kind of credit. There is under Federal environmental law a program that does something like that in the Clean Air Act. There isn't one here. It's creative and it's innovative, but I don't think it's a proper factor to consider."

Regarding the Applicant's threat of a housing development if the golf course were not approved, Mr. Bernstein pointed out that it was the opinion of Commission Counsel as well as of his firm that the Commission had jurisdiction over such a project, unlike the Cape Cod Commission, which had a very different statute. "And with all due respect, it's a red herring," he said. "Your evaluation of this project should be compared to a range of alternatives, not with the sword hanging over your heads."

Mr. Bernstein urged the Commission to weigh carefully all this information, keeping in mind that the newer plan was "not terribly different from the last one."

Mr. Rusczyk asked if what Mr. Bernstein was saying was that given a choice between a golf course and housing, VCS would endorse housing. "No," answered Mr. Bernstein, "there's a range of choices here." But when Mr. Bernstein began to speak of the proposed Chapter 40B development, Mr. Rusczyk clarified that he was talking about

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simple buildout. "I think this Commission would still review a large-scale three-acre zoning subdivision for that site," said Mr. Bernstein.

Mr. Bernstein elaborated: "Sure, if the only alternatives in the world were a golf course and a nuclear power plant, everyone in this room would support a golf course. That's a red herring. That's not what's before you. And VCS has taken the consistent position that the best use for this site, the Southern Woodlands, that's consistent with the special regulations in that District of Critical Planning Concern is to preserve the habitat values, the recreational values, and there may be a valid proposal that's not here tonight that will only happen if the Commission acts and rejects this project."

If the project were denied and the site wound up in conservation, inquired Mr. Donaroma, would that not be private property? Would it be open to the public? Are VCS properties open to the public? he asked. Mr. Bernstein replied that to his knowledge the society did not own any property on the Vineyard. "VCS assists others in acquiring conservation easements," he explained. "But there is a considerable amount of property on the Vineyard that is open to the public, Land Bank property, property managed by the private non-profits. And I think VCS believes that would be the best use for the property, given its unique values."

But it would only be accessible until five o'clock, remarked Mr. Donaroma. "That's not true," said Mr. Bernstein. "Some Land Bank properties are accessible, and much of the property that's held under conservation restrictions by the Vineyard Land Trust is accessible to the public as well."

Mr. Israel requested further details on what was meant by "core habitat." Mr. Bernstein related that the term came from the Natural Heritage and Endangered Species Program and was a new mapping project. He referred Mr. Israel to pages 5 through 8 of the submission he had made earlier in the day for further details on the program.

"The Bio-Map Project is supposedly a science-based plan, a blueprint which is supposed to guide land conservation efforts, to find significant areas," Mr. Bernstein explained. "They list this site as a quote a globally rare natural community and an important habitat for many rare, unusual and threatened species, including the threatened imperial moth. And they note that the Vineyard is one of the only, is the only remaining New England site with the imperial moth, which has been extirpated from the rest of the region."

Mr. Flynn referred to a sentence on page 18 of Mr. Bernstein's submission, which read: "The MVC Enabling Act requirements mandate that the MVC deny this project, because [it] is not an essential or appropriate development, and it violates municipal and county plans and bylaws." What county plans was Mr. Bernstein speaking of? asked Mr. Flynn.

"I think the reference is to the DCPC regs, the reference is to actions that the Town of Oak Bluffs has taken," answered Mr. Bernstein. "I'm not saying that there's a specific county plan, unless Mr. O'Neill disagrees with me ... It's just referencing that section of

the Statute.” “So you’re saying that this conclusion is false?” inquired Mr. Flynn. Mr. Bernstein replied, “I’m not saying the conclusion is false. We’re referencing the section of the Statute that talks about, that talks about consistency with local and county planning, and we think it’s inconsistent with that because of the local planning, because of the DCPCs. There is no county enactment, there is no county zoning *per se*, there is no county policy, that’s correct.”

Besides the imperial moth, were there any other endangered species on the site that had not been mentioned? wondered Mr. Donaroma. “I’m not here as a scientist to say that you’ve missed it,” responded Mr. Bernstein. “You’ve had ample testimony, and you’ve got a good record on it. What the Bio-Map Project says is there may be species that aren’t endangered but are deserving of special preservation in land conservation efforts. So they’re not on the list in Massachusetts, but the site and the habitat is important enough so that it’s worth paying attention to in processes like yours and in land conservation efforts generally.”

Ms. Greene requested of the Hearing Officer that he have Mr. Bernstein supply the Commission members with copies of the Bio-Map report in full. DRI Coordinator Jennifer Rand noted that these had been ordered. “I’d like to see the report he’s referring to, because I see some discrepancies,” remarked Ms. Greene. “I don’t want just the map. I want the whole report.”

Ms. Ottens-Sargent wanted to know if the placing of this site on the Bio-Map indicated a shift in the status the State was giving it, that is, if the State was broadening the way they applied the Endangered Species Act. Mr. Bernstein replied that it came from the same agency but that was an additional program recognizing that there may be species that had not made it onto the list and so were not getting special protection but were nevertheless deserving of the special protection.

**Brian Lafferty** described himself as a **former Special Assistant to the Secretary of the Executive Office of Communities and Development** as well as a **principal of CK Associates, the developer of the Chapter 40B proposed for the site**. He stated that CK Associates believed that the Martha’s Vineyard Commission had no jurisdiction over that project. “Just so the Commission is aware, the Attorney General of the Commonwealth of Massachusetts has submitted a Motion in Court,” reported Mr. Lafferty, “and I believe it was submitted this morning – the Attorney General’s intervening in the case by filing an *amicus* brief in support of our position that the Commission is no different than any other Board in the Town of Oak Bluffs, be it the Planning Board or the Board of Health or any other local Board.”

Mr. Lafferty then observed that the Commission was in “a rather unique position” with respect to the golf course proposal. He himself was an advocate for affordable housing, he said, and the Commission was in a position where its members got to vote yes for golf or yes for affordable housing.

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**Rick Bausman of Edgartown** stated, "I'd like to suggest that while I'm fully aware that at present there are no negotiations between the developer and the Land Bank, I don't believe that this indicates that there is no conservation option here. I believe that there is. I think that it's perfectly understandable that while the Public Hearings run their course, the developer does not negotiate with conservation organizations for the sale of the property. But it's my hope and my belief that in the end the Commission will reject the golf course project [and] it'll pave the way for a conservation purchase."

Mr. Bausman then presented to the Commission a statement accompanied by the names of 719 Island residents which read: "We, the citizens of Oak Bluffs and Martha's Vineyard, urge the Martha's Vineyard Commission to deny the Down Island Golf Club proposal. We believe the conservation alternative will: protect our water supply; save our Southern Woodlands habitat; preserve our ponds; furnish an educational opportunity for children; save money – open space costs less; and provide public access for all forever." *[See the meeting file for a copy of Mr. Bausman's submission.]*

Mr. Donaroma noted that there was a letter from the Applicant mentioned in the Staff Report dated December 19 that addressed the issue of the conservation option. "That should come up before people keep talking about it," he suggested. Ms. Rand explained that originally she had been asked to read into the record a letter dated December 4 from Land Bank Executive Director James Lengyel wherein he stated that he could not discuss any past or future negotiations with the Applicant because those negotiations remained in Executive Session. *[See the meeting file of a copy of this letter and the three others referred to in the following paragraph.]*

Ms. Rand continued that earlier in the day she had received two letters from Applicant Corey Kupersmith, one to her addressing a Sheriff's Meadow Foundation letter dated December 6 that had been submitted for the record and the other addressed to Mr. Lengyel. The first letter contained the statement "Given these circumstances, and in the strongest possible terms, I must write to you, the public and all Island officials that I will never sell my land to a conservation group."

The letter to Mr. Lengyel stated: "Since we have not discussed the sale of my property to the Land Bank for many, many months now, I would not consider such a conservation sale, period. You should feel free, if you wish, to release the minutes of the Executive Session."

Mr. Rusczyk commented, "I'd just like to say to Mr. Bausman that Santa Claus has already gone to Edgartown, but if he doesn't come to Oak Bluffs, we're going to be in one heck of a ..." The Hearing Officer cut off Mr. Rusczyk with the gavel.

**Albert Sternavin [sic]** described himself as a **summer resident and a former member of the Down Island Golf Club organization who had received his money back when plans for the golf course had not proceeded as expected.** His impression was, he said, that like himself others were prepared to join again if the project was approved. "I

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believe that there's significant data that's been presented by the Down Island Club to show that the project is not environmentally detrimental," he remarked.

Mr. Sternavin referred to the fact that the property in question had been on the market for more than a decade. The Down Island organization had purchased the land and put together a plan that was environmentally friendly. Moreover, he said, they had been willing to listen and to respond to all of the concerns of the Commission.

In addition, as had been mentioned earlier, a golf course was a form of conservation, and Mr. Sternavin spoke of his experience in Maryland, where a golf course had been planned to preserve open space, as well as of Pebble Beach on the Monterey Peninsula in California, which he described as "17 miles of some of the most environmentally friendly land that you could ever see."

Mr. Sternavin concluded: "I hope in your deliberations that you would observe and look at facts and do a vote based on the facts as they have been presented by the Down Island organization."

**Nelson Smith** described himself as **a native Islander born 48 years ago whose family had lived on the Vineyard for almost 350 years**. He had experience, he said, as a wildlife and fishery biologist and was currently working as a land surveyor on the Island. But he had also, he noted, worked as a shellfisherman and an offshore fisherman, and his grandfather had been Water Superintendent in Oak Bluffs some years before.

Mr. Smith continued, "I'm opposed to the Down Island Golf Club, and I think I speak for a lot of people, particularly natives who, I think, are under-represented – fishermen and that type of people, who don't get to come to meetings, who are probably out shucking scallops right now, that have told me that they are opposed to the golf club. They see it as a threat to the environment and a threat to the shellfisheries."

What he was seeing in this proposal, Mr. Smith went on, was "a large, naturally diverse, biologically complicated area being destroyed and being changed to an artificially maintained, biologically simple, non-natural area, non-natural lawn, basically, with a few forested areas." Among his concerns, he said, were: that the club would use large amounts of water; that the club would require a large expenditure of energy; that the club would involve the dangerous use of pesticides, including fertilizers, over which the people of the Island would have no control; and that the club was designed to benefit only a small number of people to the detriment of many.

One of the things he did in his current position as a land surveyor was to help design nitrogen-reducing septic systems, mostly residential, with some local engineers, remarked Mr. Smith, and he believed that some of the numbers for the costs associated with such system provided earlier by Mr. Nelson were somewhat on the low side.

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Mr. Smith elaborated: "I think nitrogen-mitigating septic systems cost significantly more than eight thousand dollars a year to engineer, design and install, and I believe the maintenance contracts that are required are probably upwards of two to three thousand dollars a year.... They need to be inspected by an engineer several times a year. They also need water quality monitoring and testing, I think on the order of three to four times a year, and even in the maintenance manual it's written that they also have to."

Finally, Mr. Smith spoke about the Island and of how people chose to live here because of its unique natural beauty, beautiful beaches, clay cliffs and salt ponds. "And we don't appreciate it for the artificial, highly maintained landscapes of golf courses," he observed. "That's more of what I consider off-Island, and I don't consider it to be part of the natural beauty of the Island. I don't consider golf courses to be beautiful at all."

The other thing that he enjoyed about the Vineyard, said Mr. Smith, was "the slower pace of life, the slower traffic, hopefully we'll still have slower ferries, we have wooden sailboats in our harbors, and we don't have many fast-food restaurants. I think people can still make a living here shellfishing, shucking scallops and doing those sort of things, hunting and fishing, enjoying nature, and I don't think really golf fits into that picture in the extent that we're talking about. We have enough golf courses on the Vineyard as it is."

**Bruce Poole, President of SP Engineering in Salem**, related that his firm had done a study on Lagoon Pond in 1986-87 with State money to help determine the diagnostic conditions of the pond. Because of the current proposal, he said, his firm had upgraded and refurbished a lot of their wells, and they had two years' worth of monitoring data in the south end of the pond, which he then submitted for the record. *[See the meeting file for a copy.]*

Mr. Poole described how in 1986 his firm had put 12 monitoring wells of a shallow nature (only 5 feet deep, approximately 10 to 15 feet from the edge of the pond) around the entire perimeter of Lagoon Pond. Said wells were placed in areas that had groundwater seeps, he noted, so that they would be sampling the largest areas of contribution of water entering the pond. The culvert spring at 407 Barnes Road, which runs all the time, had served as their baseline data point for the last 15 years, he said.

In rebuilding the wells recently, continued Mr. Poole, they had had an opportunity to revisit and examine what had happened to the coast in these areas, particularly at Wells 7 and 8, located at the Oklahoma Heights side. "These two wells showed extremely high nitrate levels this year, 3.7, 4.2 [milligrams per liter]," he reported, referring the members to page 6 of his report. At that end of Lagoon Pond, there was only about 9 percent maximum residential buildup, he said. On the other hand, the nitrate levels on the Barnes Road side had not changed substantially in 15 years, with nitrate levels below 0.5 milligrams per liter.

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The Oklahoma Heights side, with levels of 3.0 to 4.5 milligrams per liter, was a substantial contributor of nitrates to the pond, related Mr. Poole. "Most guidelines for introduction of nitrogen into the water bodies, into the sensitive wetlands is around 3.0 milligrams per liter as a threshold limit for nitrogen loading to that environment," he said.

Even factoring in that this had been a very dry summer, thereby causing a worst-case scenario, Mr. Poole went on, "this data shows credibility to the fact that residential development will produce more nitrates that will enter the pond than the golf course as proposed and probably with most golf courses as proposed." The figure of 25 pounds per year times 99 houses was low, he noted, because most people building on a 3 acre lot were not going to put up three-bedroom houses.

The last time he had been in front of the Commission, said Mr. Poole, had been in support of the DCPC for Lagoon Pond. "But I feel that this preservation of open space is just as important as that DCPC when we did that," he declared, "because if we're looking at 25 to 3,000 pounds of nitrogen from residential development, we're basically going to see nitrates of 3 to 4 milligrams per liter on the entire Barnes Road side."

"So land preservation can take many forms," said Mr. Poole. "I believe the golf course area is very well suited for passive recreation, it's very high above the groundwater, it has sandy soils for good treatment and filtration, and it's more than 200 feet away from the Lagoon." He pointed out that the culvert spring and monitoring well No. 6 drained this area directly and that 15 years of monitoring data had been collected that could be used to predict, interpret and develop trends for what the golf course would be doing in construction, in grow-out and in permanent condition. "So you have the monitoring in place," he noted.

Mr. Poole emphasized that any plan of this scale needed controls, like a monitoring plan, perimeter monitoring and quarterly testing during construction, adding that he had written up those conditions as part of his submission. A project like this, he said, also needed threshold limits, "action levels, if you will, limits where if nitrogen goes over a certain amount, remedial alternatives or remedial actions, there's got to be some thresholds that are set upon the groundwater, the surface water and even the shellfish densities and the eelgrass densities in the south end of Lagoon Pond. Then we can tie these limits to remedial alternatives."

The first obvious remedial alternative, continued Mr. Poole, would be to change the operations of the golf course. However, he noted, there were also others that were much bigger in scope. For instance, should the groundwater go over 3 milligrams of nitrogen per liter on the Barnes Road side, there could be operational changes, plus you could increase your nitrogen offsets – more upgraded septic systems, runoff control basins and even doing nitrogen reduction on the entire south end, where there were approximately 26 houses, half of which were too close to the Lagoon in any case.



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Another conceivable alternative, said Mr. Poole, would be to intercept the groundwater flow at the lower area of Barnes Road and treat it and denitrify it, then run it through a constructed wetlands. Other actions could lead to increased circulation in the south end, for instance, dredging the south end or dredging the channel from Halfway Rock, where there was a constriction, to the south end.

Mr. Poole concluded by requesting that the Commission consider the golf course proposal in light of the opportunity it presented to upgrade septic systems, to preserve public access and open space, and to prevent residential development on a large tract of land.

Ms. Greene wanted to know for whom Mr. Poole had conducted his study in the 1980s. "In '86, '87? That was for Mass DEP," answered Mr. Poole. "And who paid for your recent study?" asked Ms. Greene. "Lagoon Pond Association," replied Mr. Poole, "although I am not speaking on behalf of them. I'm speaking as an independent expert."

**Robert Culbert** described himself as **a wildlife biologist who was speaking for himself**, emphasizing that he was not representing any of the Island conservation organizations that he had worked for or with. He said he would address issues of core habitat and would display maps showing current conditions, what the habitat would look like if the current plan was developed as well as his own suggestions for the redesign of the course in a way that would preserve more core habitat than the current plan did. *[Mr. Culbert later submitted these maps for the public record, along with a letter.]*

Mr. Culbert first showed a map of the Southern Woodlands as the core habitat existed today, including not just the area of the golf course design but also abutting properties. The blue area, he said, was edge habitat, the type of habitat that was predominant on Martha's Vineyard, as measured 300 feet from the bounds of developed properties and roads; the green areas indicated interior forest.

"But what this shows," said Mr. Culbert, "is that right now the Southern Woodlands is forest interior habitat that will support a number of species that are not necessarily listed under any Endangered Species Act, but are on Watch Lists, Blue Lists or various lists prepared by organizations to indicate the species that have declined in some cases by as much as 50 percent over the past 30 years, which may be on the Endangered Species List in the future."

Mr. Culbert continued, "It's easier to save those species now than it is to wait until they're endangered. Those species would include wood thrush, hermit thrush, oven bird, red-eyed vireo and scarlet tanager, which may or may not be present on the property now, but that doesn't mean it's not their habitat or won't be their habitat."

Mr. Culbert expressed the opinion that the property owners had an obligation to protect the wildlife habitat that existed on their land and that they could do a lot better in designing a course that would allow that protection.

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Next, Mr. Culbert showed a depiction of the Southern Woodlands site as it would look under the current proposal. Here, he pointed out, the disturbed area, in blue, was 300 feet from any hole, and thus it was apparent that much of the contiguous interior forest area would be gone under this plan. The green areas showed, he said, where interior forest would remain. Except for the Webb's Campground site, he noted, there were not significant green areas on the Down Island Golf Club site itself; the most significant ones were in fact the Town Parcel and areas on abutting properties.

With ownership of around 280 acres and only 71 acres of managed turf, remarked Mr. Culbert, it would seem to him that the Applicant could "do a lot better in preserving the interior forest on their land." Mr. Culbert spoke also of the threat to the box turtle, should the plan as presented be approved.

Proceeding to his third map, Mr. Culbert showed his redesigned golf course plan, which assumed the Applicant's purchase of the Town Parcel and the rearrangement of the holes. "There could be an 18-hole golf course with Webb's Campground and significant forest interior habitat," he said, "just by rearranging the holes in that area and perhaps with the Land Bank and the Town working together to protect some of the parcels in the Southern Woodlands that are not part of the Down Island Golf proposal.

Mr. Culbert concluded: "I urge you to consider that, and I encourage Down Island Golf to consider some of these changes, looking and seeing whether they can work with the Town, such as to do that."

**Brian McGroarty of Oak Bluffs** recalled how Executive Director Charles Clifford had once advised him not to lecture the Commissioners. "But time has taught me that not lecturing doesn't work," he said. Mr. McGroarty then proceeded to compare those who simply did not like golf to those who up until the 1930s said that they just did not like mold. However, Sir Alexander Fleming, "an observant and open-minded person," had isolated a mold that fought bacteria and named it penicillin, he related. "The treatment of infection was revolutionary, and mankind has benefited ever since," he observed.

To this day, Mr. McGroarty, he did not like mold. "However, I recognized that it has helped myself and others, in spite of my own personal bias," he said. "Well, if you're biased against golf courses, go ahead and say so. But please vote with the awareness and the vision of Alexander Fleming."

Mr. McGroarty then referred to two letters against the golf course he had seen, one that cited a 1994 cost of services analysis and another that quoted a field staff naturalist from the 1970s. In searching for an appropriate parallel to the golf debate, he said, he had looked to Chapter 37 of the Book of Genesis and the story of Joseph, who had had prophetic dreams about ruling over his present family and the future Tribes of Israel. Joseph's brother had planned to kill him with these words: "Here comes that dreamer....

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Come now. Let's kill him and throw him into one of these cisterns. Then we'll see what comes of his dreams."

Today, continued Mr. McGroarty, people were more likely to say, "Here comes a dreamer. Let's kill his dream. Then we'll see what becomes of him." He then asked rhetorically where society would be without dreamers. "At one time in America," he noted, "freedom itself was a dream."

Mr. McGroarty then observed that every Applicant that came before the Commission had a dream. "Are we to kill all the dreams?" he asked. "Of course not." At times part of the Commission's process was to splash cold water into the face of a dreamer, he said, adding, "You have splashed plenty of cold water, and this project has become all the better for it. Well, in the end the brothers didn't kill Joseph or his dreams. But they did sell him off into slavery for 20 shepherds. Centuries later, this practice would become known as 'Approved with Conditions.'"

Turning to the story of Cinderella, Mr. McGroarty compared the circumstances of its heroine to the plight of Oak Bluffs. Like Cinderella, the Town was often stuck with chores that other Towns were unable or unwilling to do for themselves, he remarked. When the stepsister Town, Edgartown, was faced with a choice between high-density development and a golf course, the Commission had approved golf, he said, this without any nitrogen offsets over the very same sole course aquifer, strictly organic on 71 acres of managed turf on the last parcel of open space between Edgartown Center and the State Forest.

Now the Town of Oak Bluffs was faced with the same choice, but with a proposal that had better community benefits and nitrogen offsets in response to the Commission process, said Mr. McGroarty. "What remains to be seen is whether you will validate your own process. What remains to be seen is whether you can treat your regional stepchildren the same. And what remains to be seen is whether the Martha's Vineyard Commission will be fair to Oak Bluffs."

Mr. McGroarty concluded: "I ask each and every Commissioner to please honor the process tonight and approve the Down Island Golf Club."

**Anne Gallagher of Oak Bluffs** related that she had sat through the first Application process as a Commission member and that she still opposed the proposal. "I think the developer is frantic," remarked Ms. Gallagher. "I think he is using 40B as a threat ... and I think that's exactly what it is, a bluff."

Ms. Gallagher pointed out that the Land Bank had bought less land in Oak Bluffs than it had in any other Town on the Island and that the acquisition of the Southern Woodlands was "top priority." "And if you vote this down," she continued, "they are going to come up with a plan to negotiate the purchase of this land, and I hope you keep that in mind."

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Ms. Gallagher noted that both the Friends of Sengekontacket and the Lagoon Pond Association had come out against the proposal, and she reminded the Commission that the Southern Woodlands was the last place of open land that Oak Bluffs had. "And I think making it into a golf course for 300 private players to use is the wrong use for that land. I think it should be kept open for everyone, not just Oak Bluffs, but the whole Island, and I just urge you to have the strength to turn this down and take it step by step on what follows," she concluded.

**Theophilus Nix, a fourth generation resident of Oak Bluffs,** described the history of the project before them as a sorry one, where the Town had passed up its opportunity to purchase the land. Despite the fact that nobody thought a developer would be willing to pay the price being asked by the owners, someone had, in fact, purchased it, he said. And although lawyers had told the Town that the titles to the land would never be cleared, the Applicant's attorney's had achieved this in six months.

Experts were saying now, continued Mr. Nix, that the housing development could not be put in without review by the Martha's Vineyard Commission. But as a lawyer and a former employee of the Boston Housing Authority, he declared, "I can tell you that just like the housing agency said, that the Commission is just another planning board that does not have the ... authority, just like you heard tonight, which I'm saddened by that the Attorney General is now weighing in against us." Once again, he said, the experts were going to be wrong.

Mr. Nix then recounted how as a member of the Blue Ribbon Committee that had studied the possible purchase of the Southern Woodlands by the Town, he had been in support of buying it all, and he had spent two and a half years trying to do that. But the bottom line was that there had not been any money, he said, and the reality was, "if you want this property, write a check. If you don't have money, then we've got to find some common ground to get something out of it."

Over all the Island, continued Mr. Nix, access was being diminished. The Town of West Tisbury, he pointed out, had bought the Lambert's Cove Beach rather than have the Land Bank buy it, "because they wanted to keep it for themselves. That's a great example of regionalization." He provided other examples of diminishing access. So, he said, if the Commission wanted to find a way to provide access to the Southern Woodlands, protect the ancient trails and help the M.V. Arena, they had to find a way to "pass this initiative."

He was also troubled by the double standard that Mr. McGroarty had referred to earlier, Mr. Nix went on. The Meetinghouse Golf Club, proposed for the most sensitive part of the Vineyard, had lost by only one vote, he said. "Where was all the outcry then?" he asked. "It only lost by one vote. That should have been unanimous to be turned down." Moreover, the Commission had found a way to approve the Vineyard Acres II golf project. "Well, what's good for the goose is good for the gander," he declared. "What's good for Edgartown is good for Oak Bluffs."

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Mr. Nix appealed to the Commission not to take this "down the trail of being in litigation, spend millions of dollars on lawyers, and we get nothing out of it. Because that's where we're headed. It's going to be another Herring Creek. And after 10 years of litigation and millions of dollars, what does the average Islander get? There's no access. There's no affordable housing."

Mr. Nix stressed that he was not a sellout, but a realist. His Town could not afford to battle the Attorney General, he said. He concluded: "I'm owned by nobody, I work for nobody. I've taken on issues that few people would. I've paid the price. This is a great price that Oak Bluffs will pay if you say no and go home."

**Walter Knapp of Sengekontacket** said that **until July of 2000 he had been President of the Sengekontacket Homeowners Association**, 80 percent of whose members were summer residents. At their last annual meeting, he said, there were many complaints about the rising taxes in Oak Bluffs. Twenty years earlier he had retired, Mr. Knapp continued, and 10 years ago he had applied for resident membership at the Farm Neck Golf Club and found that he was 220<sup>th</sup> on the waiting list. "I was born in 1916," he said, "and the way I figure now, I'll be 95 before I'm allowed to join."

Members of the Sengekontacket Homeowners Association not only paid taxes to the Town, Mr. Knapp went on, but they also paid an annual fee of \$800 to the association, which covered costs normally taken on by the Town except for the Police Department, the Fire Department and the two or three school-age children in the development. When the association members investigated why the taxes were so high, they found that Oak Bluffs contained "a tremendous amount of untaxed property, in fact, more so than just about any other Town on the Island," he said.

Those properties, Mr. Knapp pointed out, included the high school, the skating arena, Community Services, elderly housing, the State police, the State forest, many parks and some Land Bank land. If the Land Bank were to buy the Southern Woodlands property, "I feel that that just is going to become more property that's not taxed," he commented.

Mr. Knapp said that he was confident that some of the concerns of the golf course opponents could be addressed with conditions. Moreover, it seemed to him, though, that Farm Neck Golf Club was in fact very friendly to wildlife. "I have to wear my rubbers when I go round, the few times I've played on Farm Neck," he noted. "I noticed that President Clinton wore his rubbers when he played there."

Mr. Knapp concluded that a golf course seemed to be an ideal use for the Southern Woodlands area. He summarized his reasons: it would require very little activity by the Police and Fire Departments; there wouldn't be additional children in the school system associated with it; it would pay taxes; and it would employ many people from Oak Bluffs and the rest of the Island, but only during construction but in maintenance afterward.

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**Kerry Scott of Oak Bluffs** said that she was there that evening to present some research on the environmental impairment insurance policy gathered by herself, Mary Houte [sic] and John Leite of the Oak Bluffs Taxpayers Association. She noted that the Applicant had never submitted an actual sample of such a policy or descriptions of the contents of some of these policies, as requested by a member of the Commission [Richard L. Taylor]. Instead, Robert Mone, an agent for the Applicant, had presented the names and basic information about a handful of companies that offered this insurance.

Ms. Scott described how she had called some of the companies mentioned and found out, first of all, that any of the companies would have provided a quote, something the Applicant had not offered. Moreover, Mr. Mone's comment that the \$10 million figure had come out of thin air was not satisfactory, she said; one needed to do order-of-magnitude cost estimates to determine adequate coverage.

Ms. Scott reported that one of the questions considered most important by potential insurers was whether or not the property was near any surface bodies of water. Lorne Collier of RSASL in New Jersey, a company cited by Mr. Mone, had told her that, in fact, as of December 31, 2001, his firm was no longer going to write environmental damage insurance policies.

Ms. Scott had also spoken to an executive at AIG, one of the insurers cited by Mr. Mone, who had told her that at some point someone needed to evaluate the kinds of risks that the Town needed to be protected from. In the industry vernacular, she said, no insurance company was going to insure "a burning building."

Mr. Collier of RSASL had pointed out to Ms. Scott that if his firm was considering insuring a party for damage from runoff, he advise against it if the body of water nearby was already contaminated with nitrogen. An AIG executive had explained to her that a pollution liability policy for pollution emanating from the site would exclude damage to natural resources that are threatened by other sources, like septic systems, lawns and farms. The same executive, she added, had indicated that in the case of natural resources like groundwater, ponds and shellfish beds, it was entirely possible that the Applicant would not be able to get coverage at all.

There was also the question of deductibles, continued Ms. Scott. Insurance companies commonly minimized their exposure by required deductibles. On high-risk policies, she said, the deductible could amount of hundreds of thousand of dollars. But who, she asked, would pay that deductible? In addition, the premiums would be huge for very high-risk coverage like this, she noted.

Ms. Scott pointed out that AIG did not actually have much experience with golf course coverage, only those on landfills which were being converted to golf courses, a very different kind of coverage that protected against damage emanating from the landfill. The industry also had concerns, she said, about the Cape Cod Silent Spring Institute

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Breast Cancer Study, which had linked persistent pesticide use on golf courses and cranberry bogs to high rates of breast cancer.

Another factor to consider, said Ms. Scott, was whether the insurance company was licensed to write policies in Massachusetts and not just authorized to do so. If not licensed by the Insurance Commissioner, she explained, the company could not access the Insolvency Fund, which was necessary added protection. RSASL, for instance, was not licensed in Massachusetts, she said.

Ms. Scott concluded that the Applicant could have and should have supplied a sample policy when asked and that based on input from AIG and RSASL executives, it was entirely possible that they could not obtain coverage for the risks the golf course would present to the Town's groundwater resources, ponds and shellfish industry. Then Ms. Scott submitted written testimony for the record. *[See the meeting file for a copy.]*

James Athearn, a Commission member at large from Edgartown, asked Ms. Scott if the insurance company representatives she had spoken had given some estimate of the amount of liability coverage that would be adequate for a project like this. Ms. Scott replied that there was a process called the order-of-magnitude cost estimate that was undertaken by a private contractor, usually an environmental engineering firm, hired by the insurer.

Ms. Scott stressed that it would have been a good idea for the Applicant to have submitted a sample policy, since not only were there exclusions but there were also limits of liability for each environmental impairment incident.

Ms. Scott added that for a long time she had served on the Land Bank Advisory Committee for the Town of Oak Bluffs. She had found Mr. Kupersmith's letter to Land Bank Executive Director James Lengyel very interesting, she noted, because it had been her experience that the Southern Woodlands continued to be a number one priority for conservation for the Land Bank.

The time was 9:32 p.m. The Hearing Officer asked the Applicant's representatives if they were "prepared to wrap up." Ms. Greene wanted to know if there was going to be a Staff Report. Mr. Donaroma noted that he had heard enough public testimony but that he had questions for the Applicant. Ms. Sibley wondered if it was permissible to continue to question the Applicant but to have no further public testimony. The other thing to find out, she said, was how many people in the audience who had not yet spoken had testimony to offer.

**Discussion: Whether or Not to Close the Public Hearing.**

Mr. Toole asked for a show of hands by those who had not spoken yet but wished to speak. Ms. Greene pointed out that the speakers should also have something new to say.

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Mr. Mone suggested that the public testimony be wrapped up at this point. Ms. Sibley repeated her first question.

Governor's Appointee Joseph P. Kelley made a Motion to Close the Hearing. No second was heard. He then remarked that many accommodations had been made for speakers, yet there was a Commissioner – Dan Flynn – who had devoted much time to attending all the Hearing sessions and would not be able to vote if the Hearing was continued. "Irregardless of the accusations behind the scene, the politicking," remarked Mr. Kelley, "I think this board is at a crossroads, where if you're going to give everybody the courtesy of testifying – and I really believe they should have the courtesy of testifying – I also think you should schedule this Meeting so Commissioner Flynn has the ability to vote."

Mr. Kelley pointed to the case of the F&M Realty Trust DRI, where accommodation had been made and the entire DRI had been wrapped up in a single Meeting. The same courtesy had been shown to the County Sheriff's Department, he said, because of a consideration about funding. And irregardless of the Applicant's bank account, he added, it was still costing him money every time he came before the Commission. "And I think he's due that same consideration," said Mr. Kelley. "So we do have as a board the ability to vote this up or down. We just proved that in the last two Meetings."

Chairman Vercruysse explained that the Down Island Golf Club was of a different order of magnitude than the cases Mr. Kelley had referred to. Mr. Kelley responded, "I made a Motion to Close the Public Hearing. If it's seconded ..." "I'll second that," said Ms. Greene, "but I would like to hear the Applicant's summary." Mr. Toole said that it was not possible, that the Commission had to be out of the cafeteria by 10 o'clock. "I don't want to continue any more than anybody else," he commented.

Mr. Israel expressed the view that it would be fine if there were some way that Mr. Flynn could vote. Secondly, he continued, there were some members of the public who still wished to offer testimony. Thirdly, new information had been submitted that evening that people should be able to respond to, if only in writing," he concluded.

Ms. Sibley pointed that a speedy Approval was not possible; even some of those who had spoken in favor of the project earlier in the evening had said to approve it but with conditions. "Developing the conditions is a very time-consuming project, process" she said, adding that it would be "totally unprecedented" for a complex project like this not to go through a careful review by the LUPC. The conditions had to be developed, she stressed, before anyone could vote to approve.

"The thing is, we could vote this next week," noted Ms. Greene. "We couldn't vote this next week," responded Ms. Sibley. Ms. Greene pointed out that she knew all the conditions that she wanted to put into the Decision.



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Mr. Flynn wished to speak. He thanked Mr. Kelley, stating that the reality was that he would not be able to vote. "And I understand the reasons why," he said, noting that there had to be legitimate deliberation amongst the Commission members. "And I wouldn't want to see that rushed if it were approved or if it wasn't approved," he stated.

Mr. Flynn asked if he could make some observations. The Hearing Officer and several other Commission members nodded. "Father McGroarty, he did a great job tonight," he said, adding, "Thank God I'm going to be able to drink after January 1 and not have nightmares, all right? That's one of the reasons, one of the good things that came out of this."

Mr. Flynn then made some comments, saying, "If I were deliberating with you, these are some of the things that I may say to you, I might have said to you." He continued, "Who owns the land? That's paramount in my mind, all right. There's no doubt in my mind, in my mind whatsoever that there is not a conservation option to that property."

Although, Mr. Flynn noted, he did not know Applicant Corey Kupersmith, he did "know Herb Putnam and Bob Mone [agents for Mr. Kupersmith] as well as Ron Mechur a little less well. "This Application in my mind isn't about Kupersmith," he declared. "It's about Herb Putnam putting his name and reputation on the line, and it's about Bob Mone putting his reputation on the line. Those are the people that I've known around here for 25 years, and that's who I'm looking at if there were conditions to be made if this were to be approved. That's the door I would knock on if I wanted to get something done over there."

As for the Chapter 40B threat, Mr. Flynn went on, he could care less whether or not they built houses in the Southern Woodlands, "and I do care less if they built a golf course, and I want that land, I want that land, and there's nothing more important to me in my life and my grandson Alex's life who walks property with me ... I mean, how can you really say that it shouldn't be the way it is right now?" But there was no conservation option, said Mr. Flynn.

Having spent 27 years in law enforcement, Mr. Flynn remarked that he knew what lawyers' opinions were. "But if bull manure were hazardous material, in these Hearings we'd all be wearing hazmat suits," he declared. "A lot of it's been slung around here." As for experts, he said, they used words like "shall," "could," "maybe" and "possibly." "Science doesn't really let them say 'will,' 'definitely,' 'no doubt about it,'" he stated. Also, observed Mr. Flynn, the Town of Oak Bluffs' elected officials had come before them and offered their opinion, something that the Commission should weigh.

Mr. Flynn concluded: "So as far as I'm concerned, I've had the pleasure of working with you guys. I'm not going to be able to vote, as much as I think I deserve the right to vote. And I have given you my time. I'm not going to vote, and I'm not going to tell you how I'd vote because to be honest with you, I haven't listened to your side of the story."

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Mr. Donaroma addressed the Chairman. "By no means am I ready to vote," he said. "I'm looking forward to weeks of very aggressive debate on this issue and long research and work with our Staff on possible conditions. But I implore you to try to – I only saw two or three hands out there – if we at least could get through the public process and then Chuck [Clifford]'s nodded a yes that we can have another Public Hearing so the public can at least be here and we can have our due course with the Applicant."

After further discussion, Mr. Toole continued the Public Hearing to Thursday, January 3, 2002, at 6:30 p.m. in the Martha's Vineyard Regional High School cafeteria. The time was 9:51 p.m.

Mr. Mone stated that he was distressed that the Applicant had brought in 12 experts that evening to answer Commissioner questions and that none of them had had a chance to speak.

Mr. Toole was reminded that a Motion to Close the Hearing was on the floor. Mr. Kelley withdrew his Motion, adding that the public testimony in the January 3 session had to be limited to only one hour. Ms. Greene withdrew her second. Mr. Toole cautioned those in the audience that the public would be very restricted in the amount of testimony time on January 3. Those who wished to speak were asked to sign up with the Secretary. The time was 9:53 p.m.

**Vote: Acceptance of the Nomination of the Amendments to the Boundary and  
The Guidelines of the Menemsha-Nashaquitsa Ponds DCPC.**

Recording Secretary Pia Webster explained that the Commissioners were to vote this evening on whether or not to accept the Nomination of the proposed amendments to the boundary and Guidelines of the Menemsha-Nashaquitsa Ponds DCPC and to have those amendments be considered in Public Hearing. "So moved," said Ms. Sibley, who was seconded by Christina Brown, a Commission member at large from Edgartown.

Robert Zeltzer, a Commission member at large from Chilmark, expressed his concern that the two elements of the changes should be heard separately. "I think we have to separate the two for rational discussion," he remarked. Ms. Sibley pointed out that after the Public Hearing the Commission was free to accept one part of the proposed changes and not the other. "But in fairness, we hear it all," she said.

The discussion continued. Then Ms. Warner said, "I would like to move this on to the Public Hearing process so the Town of Chilmark can tell us how they feel about these issues." Chairman Vercruysse asked if there was more discussion, reminding the members that the Hearing would be in Chilmark.

Responding to a question from the Chairman, the Recording Secretary said that the Public Hearing was set for Thursday, January 24, in the Old Menemsha School. Ms.

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Greene expressed the opinion that the site chosen was too small. DCPC Coordinator Jo-Ann Taylor explained that the acoustics were poor in the Chilmark Community Center.

After some discussion, the Chairman asked for a voice vote on Ms. Sibley's Motion. All voted Aye, except for Mr. Athearn, who abstained.

It was agreed that both amendments could be addressed within the same Public Hearing.

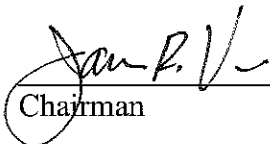
**Election of Officers for 2002.**

Ms. Sibley moved **That The Commission Vote For The Slate Of Officers As Recommended By The Nominating Committee**, duly seconded. By voice vote, said Motion carried unanimously.

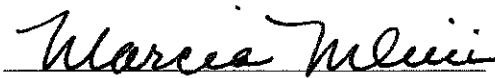
**Attendance Awards for 2001.**

The Recording Secretary presented the Florence Brown Memorial Awards for good attendance, noting that 12 of the 16 Island Commissioners had records of 90 percent attendance or better. *[See the meeting file for the 2001 attendance record.]*

The Regular Meeting adjourned at 10:01 p.m.

  
Chairman

2-7-02  
Date

  
Clerk-Treasurer

2-7-02  
Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; D. Flynn;  
J. Greene; T. Israel; J.P. Kelley; C.M. Oglesby; M. Ottens-Sargent;  
K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; A Woodruff;  
and R. Zeltzer.

ABSENT: A. Bilzerian; E.P. Horne; and R.L. Taylor.

*[These Minutes were prepared by Recording Secretary Pia Webster using her shorthand notes as well as a tape recording of the Regular Meeting.]*

***Summary of Revisions to the  
Meeting Minutes of December 20, 2001  
Proposed by the Commission Members  
in the Meeting of January 10, 2002***

*[An excerpt from the Meeting Minutes of January 10, 2002 follows immediately. It describes the revisions requested by the Commission members with regard to the Meeting Minutes of December 20, 2001.]*

The Commissions member did not request or recommend any revisions to the Meeting Minutes of December 20, 2001.